RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — WHERE THE COVENANTEE HAS NO CORPOREAL INTEREST IN ADJOINING LAND. — The predecessor in title of the defendant covenanted with the London County Council that, in consideration of the latter's sanctioning the laying out of a street across his property, he would not build at the end of the proposed street, where the Council intended to continue the street at a later time. The Council sought to enforce this covenant against the defendant, the present owner, who took the land with notice. *Held*, that the covenant cannot be enforced. *London County Council* v. *Allen*, [1914] 3 K. B. 642.

See page 201 of this issue of the REVIEW for a discussion of the nature and proper limits of the doctrine of equitable servitudes.

SALES — IMPLIED WARRANTY — EXCLUSION BY EXPRESS WARRANTY. — The defendant, a canner, contracted to sell to the plaintiff, a jobber of bakers' supplies, a quantity of canned apples guaranteed for six months against "swells," caused by gas from the souring of the fruit. After delivery, the apples developed a strong flavor of gasoline and rubber, so that the plaintiff's customers refused to purchase them. He now sues the defendant on an implied warranty of fitness and merchantability. *Held*, that the plaintiff may recover. *Wolverine Spice Co.* v. *Fallas*, 148 N. W. 701 (Mich.).

Ordinarily a warranty of merchantability and fitness for the intended purpose would be implied on a sale of unspecified goods such as that in the principal case. *Hood* v. *Bloch Bros.*, 29 W. Va. 244, 11 S. E. 910. It is sometimes said, however, that this implication is necessarily excluded by an express warranty in the contract. See *Turl's Sons* v. *Williams, etc. Co.*, 136 App. Div. 710, 712; 121 N. Y. Supp. 478, 480. In certain cases, of course, an express warranty clearly shows an intention to exclude any implied agreements, as when the seller expressly warrants only certain qualities, or when he agrees simply that the product shall conform to specifications furnished by the buyer. *Dowagiac Mfg. Co.* v. *Mahon*, 13 N. D. 257, 101 N. W. 903; *Gill & Co.* v. *National Gaslight Co.*, 172 Mich. 295, 137 N. W. 690. The same intention is apparent when the express warranty is as broad as that sought to be implied, but is unavailable, because the buyer has not performed a condition precedent. *Wasatch Canning Co.* v. *Morgan Canning Co.*, 32 Utah 229, 89 Pac. 1089. But it seems clear that a simple warranty of quality, not in any respect inconsistent with the implication, does not exclude an implied warranty of fitness and merchantability, for warranties are usually expressed in the contract to protect the buyer, not to limit the liability of the seller. *Cook* v. *Darling*, 160 Mich. 475, 125 N. W. 411; *Boulware* v. *Victor Auto Mfg. Co.*, 152 Mo. App. 524, 134 S. W. 7. See UNIFORM SALES ACT, § 15 (6).

SPECIFIC PERFORMANCE — DEFENSES — CLEAN HANDS: APPLICATION OF THE MAXIM TO BASEBALL CONTRACTS. — The defendant, a baseball player of exceptional ability, was induced by the plaintiffs to sign a contract to play for them, although they knew that he was obliged by the reserve clause of his contract with the Philadelphia Club to offer his services for the season to that club. The Philadelphia Club had the right to terminate this contract on ten days' notice to the defendant. The plaintiffs seek an injunction to restrain the defendant from playing for the Philadelphia Club. *Held*, that the injunction will be refused. *Weegham* v. *Killifer*, 215 Fed. 168 (Dist. Ct., W. D., Mich.); affirmed, 215 Fed. 289 (C. C. A., 6th Circ.).

The defendant here was bound by a contract similar to the one in the previous case to play baseball for the plaintiff during the season. The contract was the one prescribed by the National Commission under the National Agreement, which controls forty leagues and substantially all professional baseball players in the country. The defendant broke this contract and signed another with